

Docket No.: 10-0563
Bench Date: 12-21-10
Deadline: 12-28-10

M E M O R A N D U M

TO: The Commission

FROM: John D. Albers, Administrative Law Judge

DATE: December 15, 2010

SUBJECT: Illinois Power Agency

Petition for Approval of Procurement Plan.

RECOMMENDATION: Enter the attached Post-Exceptions Proposed Order.

This matter was held at the December 15, 2010 Bench Session and is being resubmitted without any changes for the December 21, 2010 Regular Open Meeting.

On November 22, 2010, the Proposed Order pertaining to the annual power procurement plan ("Plan") was served on the parties. The Proposed Order reflected the suggested resolution of numerous contested issues surrounding the procurement of power for the period of June 2011 through May 2016 based on detailed five-year demand forecasts provided by Ameren Illinois Company ("AIC") and Commonwealth Edison Company ("ComEd"). On December 1, 2010, the Attorney General ("AG"), AIC, ComEd, Exelon Generation Company, LLC ("ExGen"), Illinois Competitive Energy Association, Illinois Power Agency ("IPA"), Retail Energy Supply Association ("RESA"), Commission Staff ("Staff"), and Wind on the Wires ("WOW") each filed a Brief on Exceptions. The Environmental Law and Policy Center ("ELPC") and Natural Resources Defense Council jointly filed a Brief on Exceptions. On December 6, 2010, the AG, AIC, ComEd, ExGen, Horizon Wind Energy LLC ("Horizon"), IPA, Illinois Wind Energy Association, RESA, Staff, and WOW each filed a Brief in Reply Exceptions. Iberdrola Renewables, Inc. ("Iberdrola") and Duke Energy Generation Services Holding Company, Inc. ("Duke") jointly filed a Brief in Reply on Exceptions.

Upon consideration of the Briefs on Exceptions and Briefs in Reply to Exceptions, both substantive and non-substantive changes have been made to the language of the Proposed Order. All changes in the accompanying Post-Exceptions Proposed Order are reflected in legislative style. While some of the substantives changes are to conclusions, none of the changes outright reverse any of the conclusions. The deadline for Commission action is December 28, 2010. After the December 15, 2010 Bench Session, the only other scheduled Commission meeting

before the deadline is the December 21, 2010 Regular Open Meeting. In light of the limited opportunities for discussion, if the Commission has any questions it would like addressed at a meeting, please send those questions in advance of the meeting so that the necessary information can be found in the record and provided at the meeting.

The most contested issue concerns the procurement of renewable energy resources. The Proposed Order found that in addition to any renewable energy credits ("RECs") that are procured by the IPA, some portion of the renewable energy resource portfolio under a power procurement plan must also consist of renewable energy. The Proposed Order also noted that the IPA Act reflects a preference for long-term renewable contracts whenever possible. Of the two proposals in the record calling for the procurement of renewable energy, the Proposed Order found that Iberdrola's was set forth better. Many parties objected to the interpretation of the IPA Act (in large part due to a misunderstanding of what the Proposed Order called for) and expressed concerns over the implementation of Iberdrola's proposal. Revisions have been made to the conclusion on the procurement of renewable energy resources (Section VII.C.17 of the Post-Exceptions Proposed Order) to avoid any possibility of misunderstanding.

If the Commission shares any of the parties' concerns about implementing Iberdrola's proposal, suggested modifications to the conclusion on the procurement of renewable energy resources are provided below. These modifications set aside Iberdrola's proposal in favor of procuring five-year RECs and directing the IPA to determine a reasonable volume of renewable energy to procure under the pending procurement plan. The recommendation to acquire five-year RECs stems from the positions of Horizon and WOW. The idea of directing the IPA to determine a reasonable volume of renewable energy stems from a suggestion made by ELPC.

To adopt the suggested alternative conclusion, the Commission should begin by adding the following sentence to the end of the paragraph in Section VII.C.17 of the Post-Exceptions Proposed Order beginning "Having determined that the Plan must include:"

While Iberdrola's proposal may be the least objectionable, the Commission is reluctant to adopt it simply for the reason that there are no better alternatives in the record, particularly in light of other parties' concerns that allocating 50% of the 2011 renewable energy procurement to 20-year contracts may consume too much of the RERB to support future long-term procurements.

In addition, the paragraph in Section VII.C.17 that begins "In the absence of any other alternative in the record" should be replaced with the following two paragraphs:

In the absence of any better solution in the record to satisfy the statutory requirement for electricity from a renewable resource, the Commission finds itself in a difficult position. Adopting any of the proposals in the record calling for procurement of renewable electricity

may have unintended consequences. Having clarified what is required by statute, the Commission concludes that the most reasonable course of action is to approve a combination of mid-term RECs and renewable energy. In its settlement proposal, Iberdrola suggests acquiring five-year RECs using 15% of the RERB. Horizon recommends the same in its Brief in Reply to Exceptions as an alternative to Iberdrola's original proposal in the event that the Commission is not comfortable with Iberdrola's primary recommendation. WOW's proposal also includes procuring five-year RECs (as well as some one-year RECs). The Commission notes that in response to Iberdrola's earlier settlement proposal, Duke and Staff indicate that they are willing to accept the procurement of five-year RECs. The Commission considers the procurement of five-year RECs to represent a reasonable balance of the various concerns expressed on this issue, such concerns being discussed further below.

As for that part of the Plan's renewable energy resources portfolio consisting of renewable energy, the Commission directs the IPA to determine at the outset of the contract development workshops a reasonable volume of renewable electricity to procure under this Plan consistent with the findings herein. In determining a reasonable volume of renewable electricity, the IPA should consider the input of all interested parties. Consistent with the IPA Act, long-term contracts should be procured whenever possible.

Other areas in which the parties continue to express significant interest include the IPA's proposals to solicit energy efficiency and demand response as resources. The demand response conclusion has been bolstered; otherwise these issues in the Post-Exceptions Proposed Order remain substantively unchanged.

JDA